

The Vergara ruling is a victory for California public school students, but further reforms are still needed to protect students' rights to a high quality education.

*Earlier this month, a judge in California ruled that the state's protections for teachers, including tenure after two years and 'last in first out' layoff provisions, violated the state's constitutional clause guaranteeing a right to equality of education for students. **Katharine O. Strunk** argues that the state's policies force districts to retain lower-quality teachers and that the decision is a victory for students and parents in California's public school system. She writes that if the ruling is upheld, and California's state legislature is tasked with writing new laws on teacher's conditions, then they should take lessons from cities such as New York and Washington D.C which have introduced effective reforms to the way that teachers are evaluated and gain tenure.*



At the heart of the recent [Vergara vs. State of California lawsuit](#) is the desire to have a high quality teacher in every classroom. That good teachers are critical to student success is not up for debate; [recent research](#) has shown that a high quality teacher is *the most* important school-based input into students' achievement and long-term outcomes, including college attendance, future earnings and the likelihood of teen pregnancy. Also not up for debate is the [fact](#) that low-income and minority students have less access to effective and experienced teachers. What *is* up for debate in *Vergara* are the protections for teachers ensconced in state law: teacher tenure granted after two years on the job, complex due process procedures intended to protect teachers from arbitrary or unfair dismissal, and "Last-in-First-out" (LIFO) layoff provisions that require that teachers are laid off from school districts in reverse order of their seniority in the district.

The *Vergara* plaintiffs argued that these laws make it virtually impossible to place highly effective teachers in California public school classrooms, especially in the classrooms of the lowest-income and minority students. These laws, they contended, violate California's constitutional protection of students' rights to equal educational opportunities. Defendants – the state of California joined by the state's two largest teachers' unions – argued that these laws were necessary to protect teachers and that good administrators could and should work within current state laws to manage their teacher workforce in ways that increase teacher quality.

On June 10th, 2014, California Superior Court judge Rolf Treu ruled in favor of the plaintiffs, finding that "the Challenged Statutes impose a real and appreciable impact on students' fundamental right to equality of education **and** that they impose a disproportionate burden on poor and minority students." (p. 8). In so doing, Treu ruled, these statutes violated the equal protection clause of the California Constitution.

Judge Treu's decision is a victory for students and parents in California's public school system. It is a first step in loosening constraints on the provision of a high quality education for *all* students. But this ruling is *only* a first step – whether or not Judge Treu's decision is upheld upon appeal, the state legislature now needs to commence with the hard work of determining what laws can better insure equality of educational opportunity for California's students.



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Teacher tenure granted in two years

Under current California law, teachers are automatically granted tenure after serving two years in the classroom, unless the district takes action not to reelect them. However, given California laws that require districts to give teachers notice of a pending dismissal by March 15th, districts are forced to determine if a teacher has or shows sufficient potential to be effective well before the end of the second year. Once granted tenure, teachers are given a permanent contract, guaranteeing them employment in their district unless they exhibit severe misconduct or incompetence. California is one of only five states with a tenure timeline this short – the mode is three years, and many states are shifting tenure policies to extend the clock and/or to require or allow districts to consider teacher effectiveness in reelect decisions.

Plaintiffs argued (and Judge Treu agreed) that California's tenure laws do not provide districts with enough time to determine if a teacher has or shows promise of being an effective teacher. Defendants countered that, for a good administrator, a year and a half should be sufficient. However, teachers improve significantly over their first few years on the job, and many districts in California have coaching arrangements in place to improve novice teachers' practice – a process that is not complete by the March 15th deadline.

Due Process

Current California law outlines a complex due process procedure for tenured teachers being threatened with dismissal. Plaintiffs argued that, as implemented in California, due process procedures take an inordinate amount of time, cost excessive amounts, and in effect make it impossible for administrators to fire ineffective teachers. Defendants argued that due process is necessary to protect teachers from unfair or arbitrary dismissal. Judge Treu ruled that current due process statutes are "so complex, time consuming and expensive as to make an effective, efficient yet fair dismissal of a grossly ineffective teacher illusory." (p.13).

Last-in-First-Out Layoffs

In California, districts facing budget constraints must lay off teachers in order of reverse seniority. They may take into account specific programmatic needs, but they cannot consider other factors such as teachers' evaluations or rates of absenteeism. Plaintiffs argued that LIFO policies force districts to retain lower-quality teachers, thus harming student achievement. Moreover, the removal of inexperienced teachers particularly harms low-income and minority students, whose schools employ greater proportions of inexperienced teachers. Defendants claimed that seniority-based layoff policies are the most objective way to lay off teachers, and without LIFO protections,

administrators would lay off more expensive senior teachers rather than cheaper novices. Judge Treu again ruled in favor of the plaintiffs.

There is substantial [evidence](#) that LIFO policies harm students more than an effectiveness-based layoff policy would, and that these effects are [disproportionately worse](#) for low-income and minority students. [Simulations](#) show that layoffs determined by a measure of teacher effectiveness result in fewer teachers removed from schools, a more effective workforce, and a lower proportional impact on disadvantaged students than would be the case under LIFO.

If not these statutes, then what?

Should Judge Treu's decision be upheld upon appeal, which the defendants have made clear they will seek, where do we turn from here? While it is clear that teachers deserve protections from arbitrary and unjust decisions and dismissals, California's current laws do not sufficiently protect students' equal rights to a high quality education. The California state legislature will be tasked with determining new laws regarding teacher tenure, due process and treatment during mandatory reductions in force. Current research provides some lessons for how we might proceed.

Reform tenure laws to enable greater administrator discretion and accountability.

[New evidence](#) suggests that simple changes to tenure policies – providing administrators with more information and accountability for tenure decisions and enabling principals to extend teachers' tenure clocks if they believe more information is necessary – can have important impacts on the quality of the teacher workforce. Under a reformed tenure process, fewer New York City teachers were automatically granted tenure, and high proportions of teachers were extended, sending them a signal that they might not be the best fit for teaching or for teaching in New York City. Extended teachers, and especially less effective teachers, exited teaching at higher rates than others. These teachers were then replaced with more effective teachers, thus enhancing the quality of the teacher workforce. This policy had particularly strong impacts for low-income and minority students.

Base tenure, layoff and dismissal decisions on evidence of teacher effectiveness and growth. Federal law has been pushing a uniform approach to teacher evaluation, regardless of specific state or district contexts. Rather than focus on one system, state legislatures should allow districts to work with local stakeholders to determine rigorous evaluation systems that provide administrators with evidence of teacher quality and growth, and that include supports to enable teachers to improve their practice. One such policy – Washington D.C.'s multiple measure teacher evaluation and support system (IMPACT) – combines the provision of information from multiple measures of teacher effectiveness with a dismissal threat for low-performing teachers, large financial rewards for high-performing teachers and support for teachers to help them meet district expectations. [A recent study](#) found that IMPACT increased voluntary attrition of low-performing teachers and improved the performance of remaining low-performing teachers as well as high-performers.

Take into account the need for compensating differentials. Public school teachers have a difficult job. They work long hours, often in difficult working conditions, and face increasingly strong accountability pressures. Rates of teacher turnover, especially for novice teachers, are very high. Removing teachers' traditional job protections in effect removes some of their total compensation; some teachers may view job stability and strong protections from arbitrary decision-making as compensation for lower salary and difficult working conditions. In fact, [one study](#) shows that districts in states with longer pre-tenure periods pay their teachers higher salaries. Policymakers must be ready to provide alternate compensation to teachers if they remove aspects of their previous compensation package, whether in the form of salary increases or improved working conditions.

The *Vergara* trial is not yet over in California, and the effects of the case are reverberating across the nation, with copycat cases emerging in other states. California has a chance to lead the nation in determining good policy that addresses the challenges of previous statutes without shifting too far in the other direction. We can hope that the legacy of *Vergara* is an increasing focus on the critical importance of ensuring that *all* students are taught by high quality teachers.

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Katharine O. Strunk is an associate professor of education and policy at the University of Southern California. Her research falls into three areas, all under the broad umbrella of K-12 education governance and reform: teacher unions and the collective bargaining agreements they negotiate with school districts, teacher compensation policies, and accountability policies. Her work on these topics centers on the various district-level policy-makers and their decisions, and on the ways the structures that are central to district operations and policy can affect these decisions and outcomes.



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